

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CURTIS LEE ERVIN,

Petitioner,

v.

VINCENT CULLEN, Warden of
California State Prison at San
Quentin,

Respondent.

No. C 00-01228 CW

ORDER REGARDING
SGT. WEAVER AND
EAST BAY REGIONAL
PARK DISTRICT
POLICE
DEPARTMENT'S
SEPTEMBER 21, 2011
RESPONSE

On May 29, 2009, Petitioner filed a discovery motion requesting any and all documents relating to misconduct by Dana Weaver, formerly a sergeant with the East Bay Regional Park District Police Department. The Court denied the motion, but granted Petitioner's request to depose Weaver. After Petitioner was unable to depose Weaver because Weaver was medically unable to sit for deposition, Petitioner renewed his request for documents, seeking disclosure of Weaver's personnel file.

On September 8, 2011, the Court granted in part Petitioner's request. The Court ordered that, within fourteen days of the order, the Department review Weaver's personnel file for any documentation indicating misconduct on the job. The Court further ordered that, in the event the Department found any such documents responsive to Petitioner's request, it notify Weaver of Petitioner's discovery request, the responsive documents and the

1 Court's September 8, 2011 order, and notify Petitioner. If Weaver
2 opposed disclosure, Petitioner was given fourteen days to respond.

3 On September 21, 2011, Weaver and the Department filed a
4 response to the Court's order. The response is not styled as a
5 noticed motion or administrative motion, pursuant to Civil Local
6 Rule 7-11. The response indicates that the Department's review of
7 Weaver's personnel file uncovered a single one-page document that
8 it found necessary to notify Weaver of, but the Department
9 believes that the document is not responsive to the Court's order
10 to disclose "documentation indicating misconduct on the job." The
11 Department and Weaver contend that the Court should not order the
12 disclosure of documents from Weaver's personnel file, but request,
13 in the alternative, that the Court conduct in camera review of the
14 document to determine if disclosure is required.

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16 Previously, in opposition to Petitioner's renewed request for
17 Weaver's personnel file, the Department sought, as an alternative
18 to disclosure of Weaver's entire personnel file, that the Court
19 conduct an in camera review of the file to determine whether any
20 items warranted disclosure. Now the Department and Weaver seek in
21 camera review of a single document that may be responsive to the
22 discovery request that the Court has granted. The Court grants
23 this more limited request for in camera review. The Department
24 shall submit the document to the Court for in camera review within
25 seven days from the date of this order.
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1 The Department and Weaver also ask that the Court determine
2 whether disclosure is warranted based on what they assert to be
3 the scope of Petitioner's original discovery request. They
4 contend that the original discovery request was limited to
5 information related to Weaver's "professional integrity, honesty
6 and trustworthiness," rather than information more broadly related
7 to misconduct. The Department and Weaver neglect that
8 Petitioner's original discovery request regarding the Weaver's
9 records also stated, "The sought after information includes, but
10 is not limited to, any allegations or reports of impropriety or
11 misconduct, disciplinary actions, citizen's complaints,
12 performance reviews, civil or criminal actions, etc." Docket No.
13 143 at 9. Likewise, the Court's order denying Petitioner's
14 original request addressed the discovery of documents indicating
15 whether Weaver "ever acted improperly or engaged in misconduct."
16 Docket No. 161 at 4-5. The Department and Weaver's request to
17 narrow the scope of the Court's September 8, 2011 discovery order
18 is denied.

21 IT IS SO ORDERED.

23 Dated: 9/22/2011

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CLAUDIA WILKEN
United States District Judge